



EPA Region 5 Records Ctr.



298501

U.S. Department of Justice

Environment and Natural Resources Division

90-11-3-945/1

Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044-7611

Telephone (202) 514-2580
Facsimile (202) 616-6584

May 9, 2003

Via Fax and Federal Express

Elizabeth Wallace
Senior Assistant Attorney General
Office of the Attorney General
Environmental Bureau
188 West Randolph Street, 20th Floor
Chicago, Illinois 60601

Re: United States v. Glen Ekberg

Dear Beth:

This letter will confirm the mutual understanding between the State of Illinois and the United States with respect to discovery privileges that may be asserted in potential civil enforcement actions, whether administrative or judicial, against Glen Ekberg, arising from his actions at the Southeast Rockford Groundwater Contamination Superfund Site ("Site"), and specifically, Area 7, under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., and corresponding state statutes.

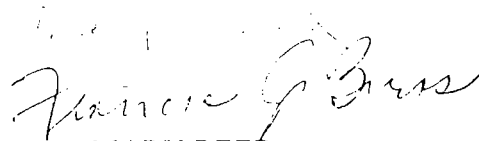
Specifically, our respective agencies share close and common interests in the enforcement of federal and state environmental laws with respect to the Site. The United States and the State of Illinois accordingly agree that the sharing of information by their employees, consultants, agents and counsel will further their common enforcement goals. Toward this end, our respective agencies have been consulting with one another both in anticipation of and the completion of civil enforcement actions against Mr. Ekberg for liability under CERCLA at the Johnson Farm, a.k.a. Alpine Farm or Area 7, and expect such consultation to continue throughout the enforcement process. Moreover, our agencies expect that this consultation may lead to a joint defense of depositions of one or more State employees, since the State of Illinois has the technical lead in supervising work being and to be performed at the Site.

In particular, the United States and the State of Illinois recognize that all written and oral communications related to any investigations or discussions regarding Mr. Ekberg's alleged violations at the Site, litigation and settlement strategy related to any such violations, or any other matters related to potential judicial action against Mr. Ekberg are being made in anticipation of or support of litigation. Therefore, neither the State of Illinois nor the United States (including their respective agencies) intend through their consultations, either before or after the initiation of litigation, to waive any privileges, such as (but not limited to) attorney-client and work product privileges, which would otherwise attach to any information, documents, or communications shared among our respective agencies. Instead, the State of Illinois and the United States specifically intend that all such privileges shall be preserved, and that privileged information shall be protected from disclosure to any potentially responsible party at the Site, except with respect to mutually agreed upon disclosures to be made for settlement purposes only. The State of Illinois and the United States further agree to consult with each other before producing documents relating to the Site in response to any discovery request or pursuant to any other law or regulation.

Please sign and date this letter to confirm your concurrence with its contents and return it to the undersigned.

Please do not hesitate to call should you have any questions. We look forward to ongoing cooperation in this matter with the State of Illinois.

Sincerely,



MARY REED
FRANCIS J. BIROS
Trial Attorneys

A G R E E D:

ELIZABETH WALLACE

cc: Thomas Turner - U.S. EPA Region 5